

William Paule, and Christopher Clitherow, Esq^{rs.} Plaintiffs,

Sir John Shaw, Bar^r Defendant,

IN A
Writ of Error in PARLIAMENT.

The Plaintiffs CASE.

THE Plaintiffs in Error were Farmers under the Crown of the Duty of Prifage of Wines; which Duty of Prifage of Wines is the ancient Inheritance of the Crown, by Prescription, and payable by Englishmen and Denizens; (That is to say) Of every Ship or Vessel Importing Ten Tons of Wine, and under Twenty, to Englishmens Account, there is One Ton due to the King, or his Farmer: And of every Ship Importing Twenty Tons, or above, there are Two Tons due to the King, or his Farmer.

The present Question is, Whether Prifage-Wines shall Pay the Additional Subsidies. As to all which, the Plaintiffs Case is as follows.

King James I. in the 9th Year of His Reign, by Indenture under the Great Seal, between His Majesty of the one Part, and Sir Thomas Waller of the other, (Reciting as therein is Recited) did Demise to Sir Thomas Waller the Prifage of Wines for Forty Years, to commence immediately after the Expiration of a Term then in being, at the Rent of 500*l.* a Year, to be paid to the King, His Heirs and Successors, in Lieu of all Services and Demands whatsoever, and without rendring any other Account, or Payment of any other Duty, than the 500*l.* a Year to the King, His Heirs and Successors; Any Statute or Ordinance to the contrary notwithstanding.

In the Year 1668, the Term of Forty Years commenc'd, and through several Mean Assignments came to the Plaintiffs; and was continuing and subsisting till the Year 1708, and the Rent of 500*l.* a Year constantly and duly Paid.

Prifage-Wines have Paid the Old Impost, 1 Jac. II; the Additional Impost, 4 & 5 Guil. & Maria; and the 25*l.* a Ton upon French Wines, 7 & 8 Guil.

Note, The two former Duties are laid upon the Farmers of the Prifage-Wines, by express Words; and the latter, they were advis'd, was intended rather as a Prohibition, than a Duty; therefore they acquiesc'd under it.

By the 12 Car. II. which Grants a Subsidy of Tonnage and Poundage, It is Declar'd and Enacted, That Prifage-Wines ought not to Pay Tonnage or Custom.

By the 8 & 9 Guil. a further Subsidy of Tonnage was Granted for Two Years and three Quarters: And the Prifage-Wines were Held and Allow'd to be Exempt and Free from that Subsidy of Tonnage, all that Term, by reason of the Clauses in the Act, that are Relative to 12 Car. II.

By the 9 & 10 Guil. a further Subsidy of Tonnage was Granted for the Term of His Majesties Life. Upon which Act, the present Question is, Whether the Prifage-Wines shall Pay this further Subsidy, and all the other Additional Subsidies; which are Deposited in the Custom-House, till the Question is Determin'd.

Note, in 9 & 10 Guil. there are the same Clauses of Relation to 12 Car. II. as there are in 8 & 9 Guil. with respect to the Rates, the Collection, and the Allowances. By 12 Car. II. Prifage-Wines are exempt from the Subsidy of Tonnage or Custom; and upon 8 & 9 Guil. they were held and allow'd to be exempt too; And 'tis likewise apprehended, they are exempt from all the Additional Subsidies of Tonnage.

The Additional Subsidies are demanded for Prifage-Wines, as well as other Wines, by the general Words only, in the late Subsidy Acts; That every Ton of Wine, imported by way of Merchandise, shall pay the Subsidy.

Prifage-Wines cannot be said to be imported by way of Merchandise, but are taken after the Importation and Breaking of Bulk, out of the Wines imported: These Prifage Wines are a Custom in their own Nature, and 'tis incongruous to have a Custom out of a Custom: If it might be, it must be by Special Words, and not by General Words.

1 Jac. I. Cap. 33. and all the former Statutes that gave Tonnage and Poundage, had the same General Words, and yet in no time for above 500 Years, was Custom ever Demanded for Prifage-Wines, tho' almost always in Farm in those times. About the Year 1650. was the first Demand of Custom for Prifage-Wines, that can be found, but at that Time the Farmer prevail'd, and had the Custom that was taken, allow'd him out of his Rent. Custom for Prifage-Wines was again Demanded about the Year 1658. and the then Parliament in 1659. Declared, That Prifage-Wines ought to Pay no Tonnage or Custom. And Resolved, That the Customs which had been taken of the Farmer, should be Default'd out of his Rent. And after the Restoration, the Parliament was of the same Opinion, as appears by the last Clause in the Act of Tonnage and Poundage, 12 Car. II. Provided, and it is hereby Declar'd and Enacted, That the Prifage of Wines, or Prise-Wines, Ought not to Pay Tonnage or Custom, and shall not be Charg'd with the Payment of any Custom, Subsidy, or Sum of Money, impos'd upon Wines by this Act, or any thing therein contain'd.

And all the late Acts that Grant the Additional Subsidies, wholly Relate to 12 Car. II. as to the Rates of the Duties, the manner of Collecting them; and the Allowances that shall be made.

In this Case, the Plaintiffs obtain'd a Judgment in the Court of Exchequer, which was Revers'd in the Exchequer Chamber, in a Writ of Error brought by the Defendant.

It's therefore Humbly Hoped your Lordships will be pleas'd to Reverse the Judgment of Reversal, and Affirm the Judgment given in the Court of Exchequer.

JOHN PRATT.

PETER KING.

SAM. DODD.